

No. 15866

United States
Court of Appeals
for the Ninth Circuit

IRMGARD SANTOS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

FILED

1958

PAUL P. O'BRIEN, CLERK

Petition to Review a Decision of the Tax Court
of the United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

ROBERT ASH,
1921 Eye St., N.W.,
Washington 6, D. C.,
For the Petitioner.

HON. CHAS. K. RICE,
Assistant U. S. Attorney General;

LEE A. JACKSON,
Attorney,
Department of Justice,
Washington, D. C.,
For the Respondent.

Tax Court of the United States
Washington

Docket No. 46327

IRMGARD SANTOS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ORDER

Pursuant to the mandate of the United States Court of Appeals for the Ninth Circuit, filed with this Court August 13, 1957, whereby the decision of this Court in this case was reversed, it is

Ordered: That the decision of this Court entered June 18, 1956, is hereby vacated, and the proceeding is placed upon the Motions Calendar at Washington, D. C., at 10:00 a.m., October 30, 1957, for consideration of any recomputation, stipulation, or motion which may be filed with the Court by either party on or before October 23, 1957.

Dated Washington, D. C., August 21, 1957.

[Seal] /s/ C. P. LeMIRE,
Judge.

Served August 22, 1957.

Entered August 22, 1957.

United States Court of Appeals
for the Ninth Circuit

No. 15371

IRMGARD SANTOS,

vs.

COMMISSIONER OF INTERNAL REVENUE,

MANDATE

United States of America—ss.

The President of the United States of America
To the Honorable, the Judges of The Tax Court of
the United States

Greeting:

Whereas, lately in The Tax Court of the United States, before you or some of you, in a cause between Irmgard Santos, Petitioner, and Commissioner of Internal Revenue, Respondent, No. 46327, a Decision was duly entered on the 18th day of June, 1956; which said Decision is of record and fully set out in said cause in the office of the Clerk of the said Tax Court, to which record reference is hereby made and the same is hereby expressly made and the same is hereby expressly made a part hereof,

And Whereas, the said Irmgard Santos, Petitioner, petitioned to this court as by the inspection of the transcript of the record of the said Tax Court which was brought into the United States Court of Appeals for the Ninth Circuit by virtue of an ap-

peal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 5th day of June, in the year of our Lord, one thousand nine hundred and fifty-seven, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record,

On Consideration Whereof, It is now here ordered and adjudged by this Court that the Decision of the said Tax Court in this cause be, and hereby is reversed.

(June 28, 1957.)

You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said petition for review notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the thirtieth day of July in the year of our Lord one thousand nine hundred and fifty-seven.

/s/ PAUL P. O'BRIEN,
Clerk, United States Court of Appeals for the Ninth
Circuit.

[Endorsed]: Filed August 13, 1957.

[Title of Tax Court and Cause.]

MOTION FOR ENTRY OF DECISION

Now Comes the Commissioner of Internal Revenue, by his attorney, Nelson P. Rose, Chief Counsel, Internal Revenue Service, and shows the Court that the liability of this petitioner found to be due in its decision entered June 18, 1956, was assessed under the jeopardy provisions of the Internal Revenue Code of 1939, and that no part of it has been paid.

Wherefore, the decision of this Court entered June 18, 1956, having been reversed by the United States Court of Appeals for the Ninth Circuit, respondent moves the Court to enter a decision finding that there is now no liability on the part of this petitioner as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive.

/s/ NELSON P. ROSE,
Chief Counsel, Internal
Revenue Service.

Filed August 26, 1957, U.S.T.C.

Granted August 28, 1957, C. P. LeMire, Judge.

Served August 29, 1957.

Entered August 29, 1957.

The Tax Court of the United States, Washington

Docket No. 46327

IRMGARD SANTOS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the mandate of the United States Court of Appeals for the Ninth Circuit filed with this Court August 13, 1957, and the order of this Court dated August 21, 1957, the respondent filed a motion for the entry of a decision that there is no liability on the part of petitioner as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive, which motion has been granted. It is, therefore,

Ordered and Decided: That petitioner is not liable as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive.

/s/ C. P. LeMIRE,
Judge.

Served August 29, 1957.

Entered August 29, 1957.

[Title of Tax Court and Cause.]

MOTION TO VACATE DECISION
OF AUGUST 28, 1957

Comes now the above-named petitioner by her attorney, Robert Ash, and moves that the decision entered in this proceeding on August 28, 1957, be vacated and that a new decision be entered showing an overpayment of transferee liability.

The reasons for this motion are:

On August 21, 1957, this Court entered an order in this case which reads as follows:

“Pursuant to the mandate of the United States Court of Appeals for the Ninth Circuit, filed with this Court August 13, 1957, whereby the decision of this Court in this case was reversed, it is

“Ordered: That the decision of this Court entered June 18, 1956, is hereby vacated, and the proceeding is placed upon the Motions Calendar at Washington, D. C., at 10:00 a.m., October 30, 1957, for consideration of any recomputation, stipulation, or motion which may be filed with the Court by either party on or before October 23, 1957.”

Despite the foregoing order, the Court, in an ex parte proceeding, without any notice to petitioner, on motion of the respondent, entered its decision, dated August 28, 1957, which reads as follows:

“Pursuant to the mandate of the United States Court of Appeals for the Ninth Circuit filed with this Court August 13, 1957, and the order of this Court dated August 21, 1957, the respondent filed a motion for the entry of a decision that there is no liability on the part of petitioner as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive, which motion has been granted. It is, therefore,

“Ordered and Decided: That petitioner is not liable as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive.”

The said decision of August 28, 1957, should be vacated and a new decision entered showing an overpayment of tax liability because of the following facts:

On or before October 15, 1952, the respondent made a jeopardy assessment of alleged transferee liability in the case at bar in the principal amount of \$68,287.90. (See notice of deficiency.) Interest on account of the said jeopardy assessment in the amount of \$26,605.15 was likewise assessed.

In Tax Court Docket No. 42,682, Irmgard Santos v. Commissioner, this Court ordered, as a result of a stipulation of the parties, that there was an overpayment of Irmgard Santos' income tax for the taxable years 1945 and 1946 in the principal amounts of \$24,768.51 and \$38,237.18, respectively.

As a result of these overpayments, the District Director in Honolulu satisfied the alleged transferee liability by crediting the said overpayments of income tax as follows: A credit of \$27,256.32 resulting from the income tax overpayment for 1945 and a credit of \$49,835.15, plus an additional \$27.00 credit, resulting from the income tax overpayment for 1946. This means that the respondent has collected from the petitioner an amount totalling \$77,118.47 on account of the alleged transferee liability.

Unless this Court enters a decision showing not only a lack of alleged transferee liability but an overpayment on account thereof in the principal amount of \$77,118.47, the decision of August 28, 1957, will remain in effect and the respondent will not have the statutory authority to refund the overpayments of alleged transferee liability. See: Sec. 6512, Internal Revenue Code.

A copy of the statement of account as furnished the petitioner by the office of the District Director in Honolulu is attached hereto and made a part of this motion by reference.

Wherefore, it is prayed that this motion be granted.

September 6, 1957.

/s/ ROBERT ASH,

Attorney for Petitioner.

U. S. Treasury Department
Internal Revenue Service
District Director
Honolulu 13, Hawaii

July 19, 1957.

In Reply Refer to: C:AAA:BQ

Mrs. Irmgard Santos
1051 Fort St.
Honolulu, T. H.

Dear Mrs. Santos:

Reference is made to a request from Mr. Robert Ash, written on your behalf, relative to your income tax for the years 1945 and 1946.

The records in this office disclose the following information:

1945/IT #805300—Non taxable return.

	Debit	Date Paid	Credit	Balance	Date*
1945/IT #12/26/51					
Spl #2 02P	10,640.63	1/ 8/52	140.63		
Int.	3,690.26	1/ 8/52	235.91		
Accrued Int.	226.11	4/ 3/52	14,180.46	0.00	
1945/IT #9/12/52					
Spl #3 00P	41,618.34	4/ 3/52	19,130.81		
Int.	16,214.62	*Abated —	38,702.15	0.00	*12/30/54

Irmgard Santos—Transferee

	Debit	Date Paid	Credit	Balance	Date*
1945/IT #Mar.					
590018/54	68,287.90	*Credit —	27,256.32		*12/30/54
Int.	26,605.15	*Credit —	49,835.15		*12/30/54
		9/26/56	27.00	17,774.58	

Orig. 1945, #9/12/52 Spl #3 02P.

	Debit	Date Paid	Credit	Balance	Date*
1946/IT #July					
320010/47	17,713.49	9/26/47	2,500.00		
Int.	429.90	10/31/47	2,500.00		
		11/28/47	2,500.00		
		12/23/47	2,500.00		
		1/27/48	2,500.00		
		2/27/48	2,500.00		
		4/ 2/48	3,143.39	0.00	

#Apr 530065/48

Add'l. Int. 379.35 4/ 2/48 379.35

Very truly yours,

/s/ JOSEPH K. S. LUM,
Acting Chief, Collection Division.

Received and filed September 6, 1957, T.C.U.S.

[Title of Tax Court and Cause.]

NOTICE OF FILING AND
HEARING MOTION

Please Take Notice the Petitioner has filed a motion in the above-entitled proceeding, a copy of which is enclosed herewith.

This motion has been placed on the Calendar for hearing October 30, 1957, before a Division of the Court at its Washington office, Constitution Avenue at 12th Street Northwest, at 10:00 a.m.

No further notice of this hearing will be sent.

/s/ HOWARD P. LOCKE,
Clerk.

Served September 12, 1957.

Entered September 12, 1957.

[Title of Tax Court and Cause.]

STIPULATION

It is stipulated and agreed by and between the parties hereto, through their respective counsel, that the following facts are true:

On or before October 15, 1952, the respondent made a jeopardy assessment against Irmgard Santos as transferee of the assets of Lawrence Santos in the principal amount of \$68,287.90. Interest on the said transferee liability was assessed on the same date in the amount of \$26,605.15.

In Tax Court Docket No. 42,682, Irmgard Santos v. Commissioner, it was decided, as a result of a stipulation of the parties filed July 15, 1954, that there were overpayments of Irmgard Santos' income tax for the calendar years 1945 and 1946 in the principal amounts of \$24,768.51 and \$38,237.18, respectively.

The overpayments of income tax referred to in the preceding paragraph were applied by the District Director at Honolulu, Hawaii, against the assessed transferee liability. This was done by the entry of two credits on the books of the District Director on December 30, 1954. One of the credits was in the amount of \$27,256.32 and represented the 1945 overpayment plus interest, and the other credit was in the amount of \$49,835.15 and represented the 1946 overpayment plus interest. In addition, a payment was made on the transferee liability on September 26, 1956, in the amount of \$27.00.

On August 7, 1957, the District Director at Honolulu, Hawaii, reversed the said credits of \$27,256.32 and \$49,835.15 and applied them against the income tax liability of Lawrence Santos for 1945.

/s/ ROBERT ASH,

Attorney for Petitioner.

/s/ NELSON P. ROSE,

Chief Counsel, Internal Revenue Service, Attorney
for Respondent.

Filed October 21, 1957, T.C.U.S.

[Title of Tax Court and Cause.]

ORDER

Pursuant to the mandate of the United States Court of Appeals for the Ninth District reversing a decision entered the 18th day of June, 1956, this Court by order dated August 22, 1957, vacated its decision, placed the case on the motions calendar for October 30, 1957, and ordered the parties to file computations, or otherwise move in respect to the case on or before October 23, 1957.

On August 28, 1957, the Commissioner filed a motion setting forth that the liability found due from petitioner in this proceeding was assessed under the jeopardy provisions of the Internal Revenue Code of 1939, and that no part of it has been paid; and, requesting the Court to enter a decision that there is no liability on the part of petitioner as transferee of Lawrence Santos for income taxes for the years 1943 to 1946, inclusive.

That motion was granted, and on August 29, 1957, the Court entered its decision providing, in part, as follows:

“Ordered and Decided: That petitioner is not liable as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive.”

On September 6, 1957, petitioner moved to vacate the decision entered on August 29, 1957, and for the entry of a decision of no transferee liability and an overpayment in the principal amount of \$77,118.47. The motion was placed upon the calendar for hearing on October 30, 1957.

On October 21, 1957, the parties filed a stipulation which, in substance, discloses that on October 15, 1952, the Commissioner made a jeopardy assessment against petitioner as transferee of assets of Lawrence Santos; that as a result of a stipulation decision was entered on August 10, 1954, in Tax Court Docket No. 42682, that there were overpayments of petitioner's income taxes for the years 1945 and 1946; that on December 30, 1954, the District Director at Honolulu, Hawaii, applied the overpayments in income taxes against such transferee liability by two credits aggregating \$77,091.47; that on September 26, 1956, he made an additional credit of \$27; and, that on August 7, 1957, the District Director reversed such credits and applied them against the income tax liability of Lawrence Santos for 1945. The manipulations of the Commissioner of the overpayments determined in a prior case now show that there is no overpayment in this proceeding at this time. Therefore, the premises considered, it is

Ordered: That petitioner's motion dated September 6, 1957, praying that the decision of this Court entered herein on August 29, 1957, be vacated and for other relief, be and the same in all respects is hereby denied.

/s/ C. P. LeMIRE,
Judge.

Dated: Washington, D. C., December 6, 1957.

Served December 11, 1957.

Entered December 11, 1957.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 51, inclusive, constitute and are all of the original papers on file in my office as called for by the "Substituted Designation of Contents of Record on Review," including exhibit 1-A attached to the stipulation of facts, petitioner's exhibit 2, admitted in evidence, and respondent's exhibits B through R, admitted in evidence, in the case before the Tax Court of the United States docketed at the above number and in which the petitioner in the Tax Court has filed a petition for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 14th day of January, 1958.

[Seal] /s/ HOWARD P. LOCKE,
Clerk, Tax Court of the
United States.

[Endorsed]: No. 15866. United States Court of Appeals for the Ninth Circuit. Irmgard Santos, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed January 20, 1958.

Docketed January 28, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

Tax Court Docket No. 46327

IRMGARD SANTOS,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

STATEMENT OF POINTS

The points on which petitioner intends to rely on this appeal from the opinion and final order and decision entered by the Tax Court of the United States are:

1. The Tax Court erred in ordering and determining that the petitioner had not overpaid her transferee liability.

2. The Tax Court erred in approving the action of the District Director in Honolulu in reversing, subsequent to the opinion of this Court on the prior appeal, the credits which he had previously made in satisfaction of petitioner's alleged transferee liability.

3. The Commissioner is in contempt of this Court by approving the action of the District Director in reversing the credits applied in satisfac-

tion of petitioner's alleged transferee liability and applying the said credits to the tax liability of petitioner's husband for the year 1945. The prior decision of this Court held that petitioner is not liable as a transferee of the assets of her husband.

4. The Tax Court's opinion and decision are not supported by the evidence.

5. The Tax Court's opinion and decision are contrary to law.

Respectfully submitted,

/s/ ROBERT ASH,

Attorney for Petitioner on
Review.

Service of copy acknowledged.

[Endorsed]: Filed January 20, 1958.

[Title of Court of Appeals and Cause.]

STIPULATION OF THE PARTIES

It is stipulated and agreed by and between the parties hereto that the printed record in the case of *Irmgard Santos v. Commissioner of Internal Revenue*, No. 15371, shall be considered by the Court in connection with the present appeal.

/s/ ROBERT ASH,

Attorney for Petitioner on
Review.

/s/ CHARLES K. RICE,
Assistant Attorney General, Washington, D. C., At-
torney for Respondent on Review.

So Ordered:

/s/ WILLIAM DENMAN,

/s/ WALTER L. POPE,

/s/ JAMES ALGER FEE,

United States Circuit Judges.

[Endorsed]: Filed February 5, 1958.